EXHIBIT A:

NEW YORK CITY COUNCIL RESOLUTION NUMBER 957, ADOPTED AUGUST 11, 1999

THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 957

..Title
Proposed authorizing resolution submitted by the Mayor pursuant to Section 363 of the Charter for the granting of franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services.

..Body
By Council Members Eisland and McCaffrey (at the request of the Mayor)

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications as the responsible agency for granting of telecommunications franchises; and

WHEREAS, pursuant to Section 363 of the Charter (the "Charter") of the City of New York (the "City"), the Commissioner of the Department of Information Technology and Telecommunications has made the initial determination of the need for franchises for mobile telecommunications services in the City of New York; and

WHEREAS, pursuant to Section 1072 of the Charter, the Department of Information Technology and Telecommunications has proposed an authorizing resolution for the granting of franchises for mobile telecommunications services; and

WHEREAS, the City Council has determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and stimulate commerce by assuring the widespread availability of reliable mobile telecommunications services;

The Council hereby resolves that:

The Council authorizes the Department of Information Technology and Telecommunications, or any successor thereto, to grant non-exclusive franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City, in connection with the provision of mobile telecommunications services in the City of New York.

For purposes of this resolution, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter.

For purposes of this resolution, "mobile telecommunications services" shall mean "mobile services" as defined in the Telecommunications Policy Act of 1996 (codified at 47 U.S.C.'153) and other voice and/or data telecommunications

services employing electromagnetic waves propagated through the atmosphere to serve portable sending and/or receiving equipment.
Only persons licensed by the Federal Communications Commission to provide mobile telecommunications services may be granted franchises pursuant to this resolution to the extent such licenses are required by Federal law.

The public service to be provided under such franchises shall be mobile telecommunications service.

All franchises granted pursuant to this resolution shall require the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.

The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the "Expiration Date"). No franchise shall be granted pursuant to this resolution by the Department of Information Technology and Telecommunications, nor approved by the Franchise and Concession Review Committee, or the Mayor after the Expiration Date.

Prior to the grant of any such franchise, a request for proposals ("RFP") or other solicitation shall be issued by the Department of Information Technology and Telecommunications. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with City Environmental Quality Review ("CEQR") and Section 197c of the Charter. The criteria to be used by the Department of Information Technology and Telecommunications to evaluate responses to such RFP's or other solicitation shall include, but not be limited to, the following:

(1) the adequacy of the compensation to be paid to the City;

(2) the financial, legal, technical and managerial experience and capabilities of the applicant(s);

(3) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise;

(4) the value and efficiency of the public service to be provided; and

(5) the value of any telecommunications facilities and services offered by the applicant(s) to the City.

The Department of Information Technology and Telecommunications shall apply the City's McBride Principles and Local Law 33 of 1997 when granting a franchise pursuant to this resolution.

Any franchise granted pursuant to this authorizing resolution shall be by written agreement which shall include, but not be limited to, the following terms and conditions:

include the payment of fees or the provision of facilities and services, or both. Such compensation shall not be considered in any manner to be in the nature of a tax, but such payment shall be made in addition to any and all taxes of whatsoever kind or description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City, law of the State of New York, or law of the federal government;

(3) the franchise may be terminated or canceled, by the Department of Information Technology and Telecommunications in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;

(4) a security fund shall be established to ensure the performance of the franchisee's obligations under the agreement;

(5) the City shall have the right to inspect the facilities of the franchisee and to order the relocation of such facilities at the direction of the Department of Information Technology and Telecommunications;

(6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;

(7) all franchisees shall be required to maintain complete and accurate books of account and records to the extent applicable to franchise compliance, which shall be made available on demand to the City for inspection at a location to be determined by the City in its sole discretion;

(8) there shall be provisions to ensure quality workmanship and construction methods;

(9) there shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters;

(10) there shall be provisions requiring the franchisee to comply with City laws, regulations and policies related to, but not limited to, employment, purchasing and investigations;

(11) there shall be provisions to ensure adequate oversight and regulation of the franchisee by the City;

(12) there shall be provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City;

(13) there shall be remedies to protect the City's interest in the event of the franchisee's failure to comply with the terms and conditions of the agreement;

(14) all franchisees shall submit to the City's Vendor Information Exchange System ("VENDEX") and the Integrated Comprehensive Contract Information System ("ICCIS");

(15) all franchisees shall obtain all necessary licenses and permits from and comply with all Regulations and Rules of the New York State Public Service

Commission, the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee;

(16) there shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to the franchise;

(17) there shall be provisions requiring the franchisee to protect the property of the City and the delivery of public services from damage or interruption of operation resulting from the construction, operation, maintenance repair or removal of improvements related to the franchise;

(18) there shall be provisions designed to minimize the extent to which the public use of the streets of the City are disrupted in connection with the construction of improvements relating to the franchise; and

(19) there shall be provisions to protect the interest of the City in the event of (A) a subsequent finding by a regulatory body or court of competent jurisdiction that the agreement, or any portion thereof, is invalid and/or unenforceable, and (B) any change in applicable law.

The Department of Information Technology and Telecommunications shall file with the Council the following documents:

(1) within fifteen days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;

(2) within fifteen days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution and any subsequent modification thereof; and

(3) on or before July 1 of each year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution during the preceding calendar year.

Adopted.

Office of the City Clerk, }
The City of New York, }

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on August 11, 1999, on file in this office.

.....

City Clerk, Clerk of Council

EXHIBIT B

ACKNOWLEDGMENT OF RELEASE DATE AND ADDENDUM

APPLICANT'S NAME: _____

RFP RELEASE DATE: _____

NUMBER OF ADDENDA RECEIVED: _____

ISSUE DATE(S) OF ADDENDA: _____

_____

_____

_____

EXHIBIT C

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract, or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except _____

_____

Full name of Proposer or Bidder_____

Address_____

City _____State_____Zip Code_____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER _____

☐ B - Partnership, Joint Venture, or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____

☐ C - Corporation
EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

_____
Title

If a corporation, place seal here:

Much be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers, or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.

EXHIBIT D

E-MAIL AUTHORIZATION FORM

The RFP document and subsequent addenda can be accessed by logging onto the following web addresses:

http://www.nyc.gov/html/doitt/html/poletoprfp.html

OR

DoITT's homepage: http://www.nyc.gov/html/doitt/home.html

Unless otherwise specifically requested in writing via mail, e-mail, or fax to the Agency Contact Person, DoITT will notify companies of updates such as addenda to the RFP via e-mail. If DoITT does not have a company's e-mail address, they must provide an e-mail address to the Agency Contact Person if they wish to continue receiving direct notification of updates. Otherwise, they may find any updates on the above websites.

If you wish to receive this RFP or addenda by hard copy mail, please provide the following information to the Agency Contact Person listed on the front of this RFP as soon as possible **via mail, e-mail, or fax.** Hard copies of the RFP will only be mailed. Subsequent addenda will either be mailed or faxed.

Contact Person's Name: _____

Title: _____

Company Name: _____

Company Address (street, city, state, zipcode): _____

Telephone Number: _____

Fax Number: _____

Information Requested by Hard Copy (RFP, Addenda, both): _____

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEXTG NETWORKS OF NY, INC.,	:	
Plaintiff,	:	**AFFIDAVIT OF ROBERT L. DELSMAN**
-against-	:	**IN SUPPORT OF PLAINTIFF'S MOTION FOR**
CITY OF NEW YORK; CITY OF NEW YORK DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; and GINO P. MENCHINI, in his official capacity,	:	**PRELIMINARY INJUNCTION**
Defendants.	:	

STATE OF CALIFORNIA)
) ss.:
COUNTY OF ALAMEDA)

I, Robert Delsman, being duly sworn according to law, upon my oath, hereby state:

1. I am Vice President, Government Relations & Regulatory Affairs of NextG Networks, Inc., which is the parent company of the Plaintiff in the above-captioned matter, NextG Networks, Inc. ("NextG").

2. This Affidavit is executed in support of NextG's Motion For Preliminary Injunction.

3. In my role as Vice President, Government Relations & Regulatory Affairs for NextG, I have personal knowledge of the telecommunications services provided by NextG and of their legal and regulatory status. In addition, I have been personally involved in every aspect of NextG's attempts to access the public rights-of-way in the City of New York in order to provide telecommunications services.

4. Based on my knowledge and experience, I have executed a Verification of NextG's First Amended Complaint For Declaratory Ruling, And Permanent Injunctive Relief ("First Amended Complaint") in the above-captioned matter. I incorporate by reference herein the allegations set forth in NextG's First Amended Complaint.

I. About NextG And Its Service

5. NextG provides Telecommunications Services. On April 4, 2003, NextG was issued a certificate of public convenience and necessity by the Public Service Commission of the New York Department of Public Service ("PSC") to operate in New York State as a facilities-based provider and reseller of telephone service, without authority to provide local exchange service. (A copy of NextG's certificate is attached to the First Amended Verified Complaint as Exhibit 1).

6. Under New York State law, NextG is a Telephone Corporation, or alternatively a Telegraph Corporation, under the terms of Article 3 of the New York Transportation Corporations Law.

7. As explained in greater detail in the Affidavit of David Cutrer In Support Of Plaintiff's Motion For Preliminary Injunction, NextG provides telecommunications services by fiber optic transmission lines that connect wireless reception devices (the wireless devices being owned by either NextG's customers or by NextG but in all cases managed, operated, maintained, and/or controlled by NextG) to the wide area telecommunications network.

8. While NextG's service may include owning wireless reception devices in certain instances, NextG is not a provider of commercial mobile radio service ("CMRS"). In other words, it is not a wireless provider. Rather, its customers are wireless providers, and NextG itself is "carrier's carrier" provider of telecommunications services.

9. As Mr. Cutrer's Affidavit explains in detail, in order to construct, operate, and maintain its facilities, and therefore to provide its telecommunications services, NextG requires access to public rights-of-way, including but not limited to utility or street light poles located in the public rights-of-way.

10. NextG is willing to install its own street light or utility poles in the public rights-of-way. However, it is our understanding that the City of New York will not permit NextG to do so.

II. NextG's Attempt To Construct Its Network In New York City

11. NextG has been attempting to obtain permission from the City of New York to construct, operate, own, and maintain facilities in the City for the purpose of providing telecommunications services for two years, since March, 2002.

12. It was our understanding from the City (throughout this Affidavit, I use "City" to refer to the City and all of its agencies, such as DoITT, unless otherwise stated) that in order to construct our facilities in the public rights-of-way, including the street light poles, signal poles, and utility poles installed by the City within the public rights-of-way, NextG would be required to obtain a franchise from the City. Specifically, it is my understanding, that because NextG provides telecommunications services in connection with wireless devices, the City maintains that NextG requires a "mobile telecommunications franchise," pursuant to Resolution No. 957 of the City. Moreover, it is my understanding that the City contends that NextG could only apply for and receive such a franchise after the City's Department of Information Technology and Telecommunications ("DoITT") issued a Request For Proposals ("RFP").

13. Since March 2002, I, along with other representatives of NextG, have communicated with representatives of the City, including DoITT, at least monthly, and often much more

frequently. Among other individuals, my communications were primarily with Agustino Cangemi, General Counsel for DoITT, Gino Menchini, DoITT Commissioner, and Bruce Regal, of the City Law Department. During those communications, we were regularly informed that DoITT was going to issue an RFP for the franchise NextG required shortly. Indeed, as early as April of 2002, I was informed by DoITT representatives that DoITT had already met with potential franchisees and was prepared to issue the RFP.

14. After several months and repeated communications with, or attempts to contact representatives of DoITT, on June 21, 2002, I submitted to DoITT on behalf of NextG a formal application letter requesting the issuance of a mobile telecommunications franchise. DoITT rejected NextG's June 21, 2002 application as invalid, and refused to consider NextG's request or to grant it a franchise.

15. I submitted the June 21, 2002 application despite the fact that DoITT had not issued an RFP, and despite the fact that NextG was concerned that the City's entire franchising process was not lawful under Section 253 of the federal Communications Act and state laws. While NextG had such concerns, it was NextG's desire to obtain access to the public rights-of-way by working with the City informally to reach lawful terms or a settlement, rather than through formal litigation. It was never NextG's intention to waive its right to access the public rights-of-way under terms and conditions that were consistent with law.

16. During the time period following the rejection of the June 21, 2002 application, I continued to have regular communications with representatives of DoITT and other City agencies, including the Department of Transportation and the Art Commission, in an attempt to bring about the issuance of an RFP and franchise to NextG under terms and conditions consistent with law. Indeed, NextG even contacted the Mayor of New York City and other City officials in

an attempt to bring to their attention the public benefits of NextG's services, and the roadblock that NextG faced.

17. The City's and DoITT's refusal to issue on a timely basis a lawful RFP by which NextG could apply for a mobile telecommunications services franchise has prohibited NextG from providing telecommunications services, or in the alternative has had the effect of prohibiting NextG's ability to provide telecommunications services.

18. When it became clear that DoITT would not commit to issue immediately a lawful RFP, NextG felt it had no choice but to bring the present action to protect its rights and to remedy the prohibition on its ability to provide telecommunications services. Indeed, to assure that further informal steps would not be fruitful, I instructed outside counsel for NextG, Mr. Thompson, to seek final written confirmation from the City and DoITT that they would not immediately remedy the situation. When the City and DoITT confirmed that they would not commit immediately to issue a lawful RFP or franchise to NextG, NextG shortly thereafter filed its complaint.

III. The City's Preferential Treatment Of NextG's Competitor And Other Similarly Situated Entities

19. If permitted to construct its network in the City, NextG would compete with entities, like Verizon, that provide telecommunications services.

20. It is my understanding that Verizon is permitted to construct facilities in the public rights-of-way in the City to provide telecommunications services, including fiber optic cables, utility poles, and pay telephone installations located on public sidewalks. Indeed, it is my understanding that Verizon has started placing wireless communications facilities on its facilities in the public rights-of-way in the City. However, it is my understanding that Verizon is permitted to install, maintain, and operate its facilities in the public rights-of-way without having

obtained a franchise from the City, and without paying the City compensation like that the City seeks to require from NextG.

21. The City's treatment of Verizon places NextG at a material competitive disadvantage, and inhibits NextG's ability to compete on a fair and balanced legal and regulatory playing field.

22. The City has also previously issued a franchise to a company to use the public rights-of-way, including the City-installed poles therein, to provide telecommunications services similar to NextG's. On June 30, 1997, the City granted to Metricom NY, L.L.C. ("Metricom"), a franchise for the use and installation of fiber optic cable and associated equipment, including cell and antenna facilities, in connection with the provision of mobile telecommunications and high-capacity telecommunications services relating to mobile telecommunications. Like NextG, Metricom was not a provider of commercial mobile radio service and was not licensed by the FCC.

23. It is my understanding that pursuant to that franchise, Metricom installed facilities, including but not limited to wireless signal reception equipment, on utility and/or street light poles constructed, operated, and maintained by the City. The facilities installed and services provided by Metricom pursuant to its franchise from the City were substantially similar to the facilities and services that NextG seeks to install and offer.

24. Notwithstanding the fact that many of the terms and conditions of the Metricom franchise are unreasonable and unlawful, in order to expedite NextG's entry and as a form of settlement of the growing impasse, NextG has offered to accept the same franchise from the City. The City, however, has refused to grant NextG a franchise on the same terms and conditions as those granted to Metricom.

25. Metricom has now declared bankruptcy and ceased operations. In early August, 2002, during my communications with representatives of the City, I learned that despite the fact that Metricom had declared bankruptcy and ceased operations, the City was asserting that the Metricom franchise was in effect and that the City could transfer it. Moreover, through public reports, I learned that the City intended to transfer the Metricom franchise to a company called Aerie Networks. The transfer to Aerie Networks would not have been the result of an application under any valid RFP.

26. Based on the public reports of the possible transfer to Aerie, and notwithstanding the fact that many of the terms and conditions of the Metricom franchise are unreasonable and unlawful, NextG proposed that DoITT and the City transfer the Metricom franchise to NextG. Again, NextG did this as a form of settlement of the growing dispute and to avoid litigation. It did not intend by its offer to waive its rights under federal or State law. However, the City refused to transfer the Metricom franchise to NextG. Thus, the City refused NextG the opportunity offered to Aerie.

27. The City's treatment of NextG in comparison to Aerie and Metricom has prohibited NextG from providing telecommunications services in the City.

IV. NextG Has Been Irreparably Harmed By The City's Actions

28. The City's laws and actions enforcing them have caused NextG irreparable harm, and absent a preliminary injunction, will cause ongoing irreparable harm to NextG.

29. Specifically, and most simply, by prohibiting NextG from providing telecommunications services, the City has deprived NextG of the ability to engage in its business, altogether. The ramifications of that cannot be measured or compensated by money damages.

30. NextG cannot calculate the damages that it has suffered by the City's prohibition because it is impossible to know how many customers and how much revenue would have been obtained by NextG.

31. By prohibiting NextG from constructing its network and providing service, the City is damaging NextG's business reputation and goodwill. If NextG is not able to get its network constructed, its reputation as a viable service provider is undermined, thus damaging its ability to attract customers. This damage cannot be calculated or remedied with money damages.

32. The irreparable harm to NextG from the City's delay and on-going barrier to its entry will continue absent a preliminary injunction. Indeed, if NextG is forced to wait until the completion of this litigation, its economic viability may even be threatened.

V. NextG's Proposal For Preliminary Injunction

33. In order to prevent ongoing irreparable harm, NextG seeks by its motion to install a limited initial network on and in the public rights-of-way, including fiber optic facilities leading to and wireless antennas located on up to nine utility poles located in the public rights-of-way in the City. Attached hereto as "Delsman Exhibit 1" is a map showing the locations of the proposed attachments to the nine poles (notated as "nodes"), as well as photographs of each pole in its current condition.

34. NextG's proposal will allow it to initiate construction and service offerings during the pendency of this action, while not seeking essentially all the relief otherwise requested in its Complaint (*i.e* , City-wide authorization).

35. If the preliminary injunction is granted, NextG will agree to abide by the City's current right-of-way construction management and safety regulations, as well as post a bond of $50,000 and appropriate insurance.

36. Moreover, the wireless devices NextG proposes to install under the preliminary injunction would fall within the technical parameters set forth in DoITT's 2004 RFP, and as such, would present no conceivable engineering or safety issues.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

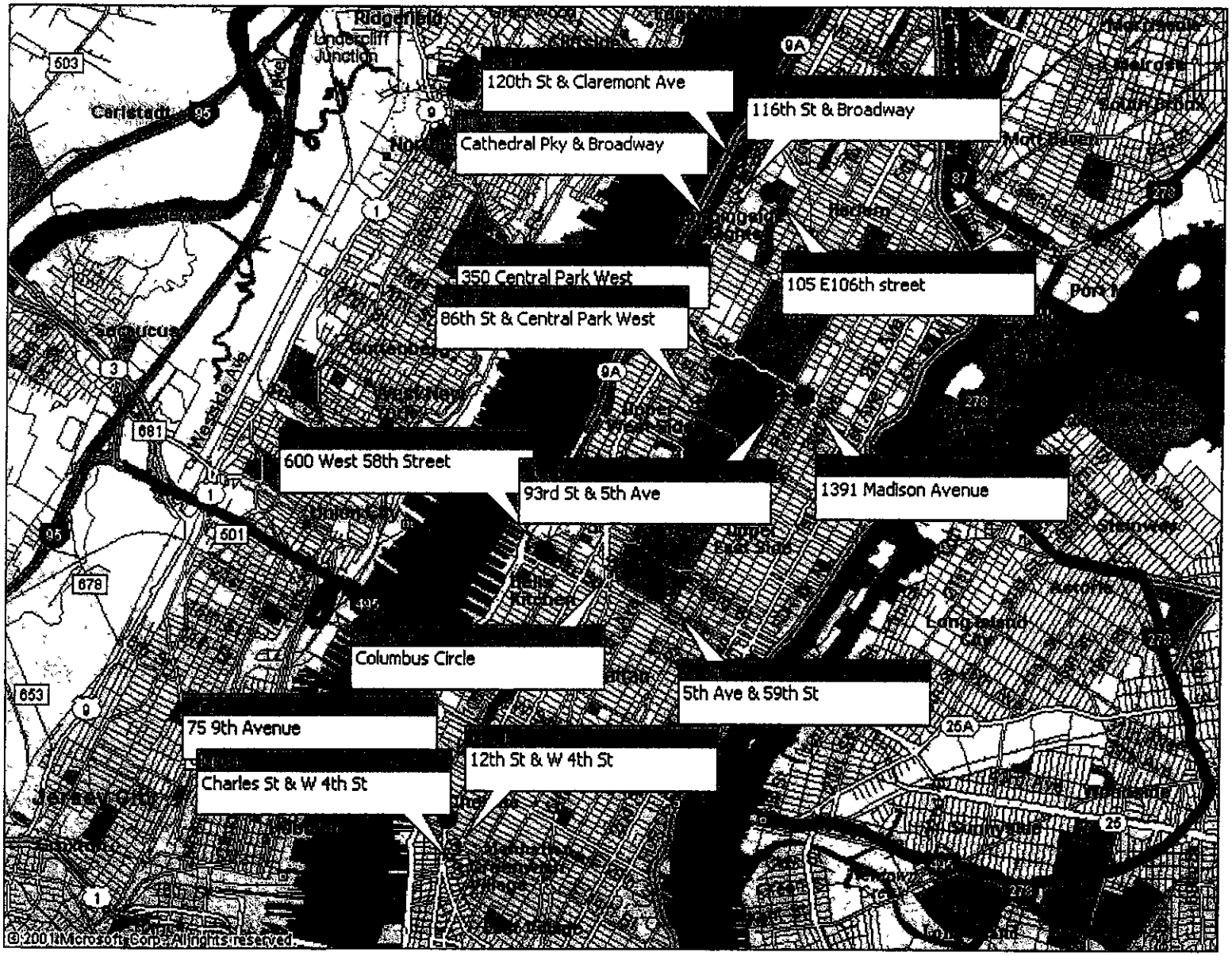
By: _____
Robert L. Delsman

Dated: March 12, 2004

Sworn to before me this
12th day of March, 2004.

_____
Notary Public

TYESE C FULGHAM
Commission # 1425262
Notary Public - California
Alameda County
My Comm Expires Jun 19, 2007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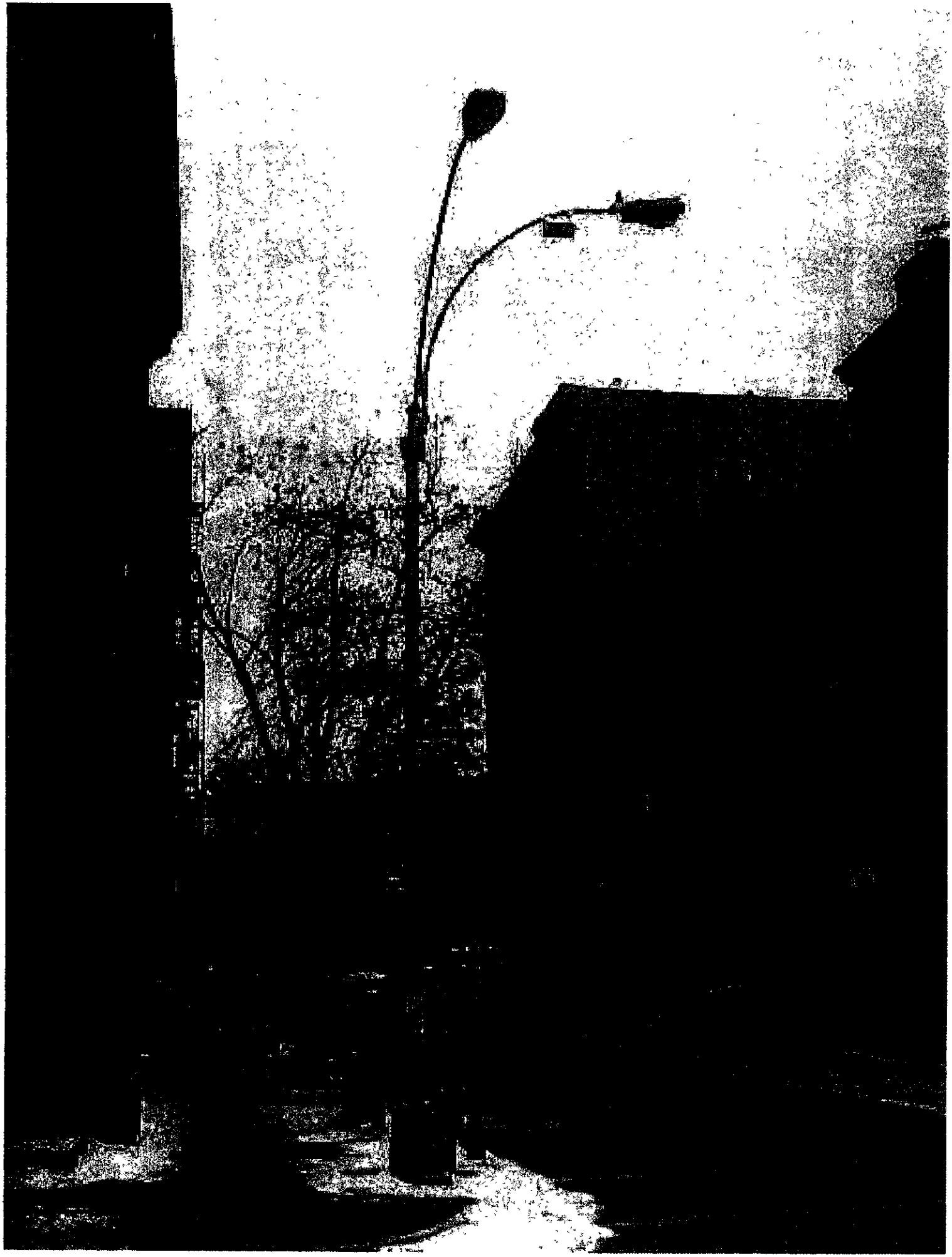

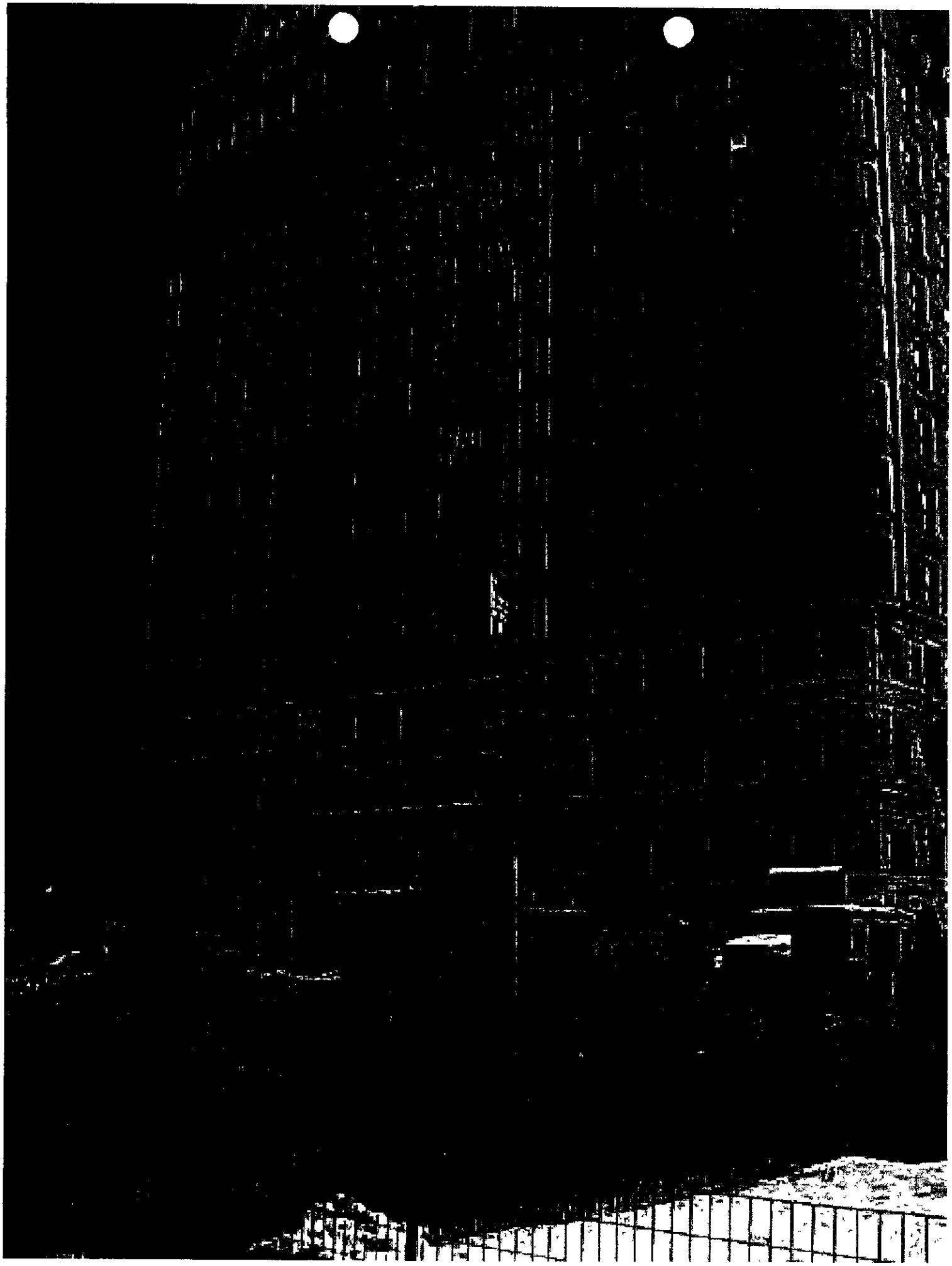

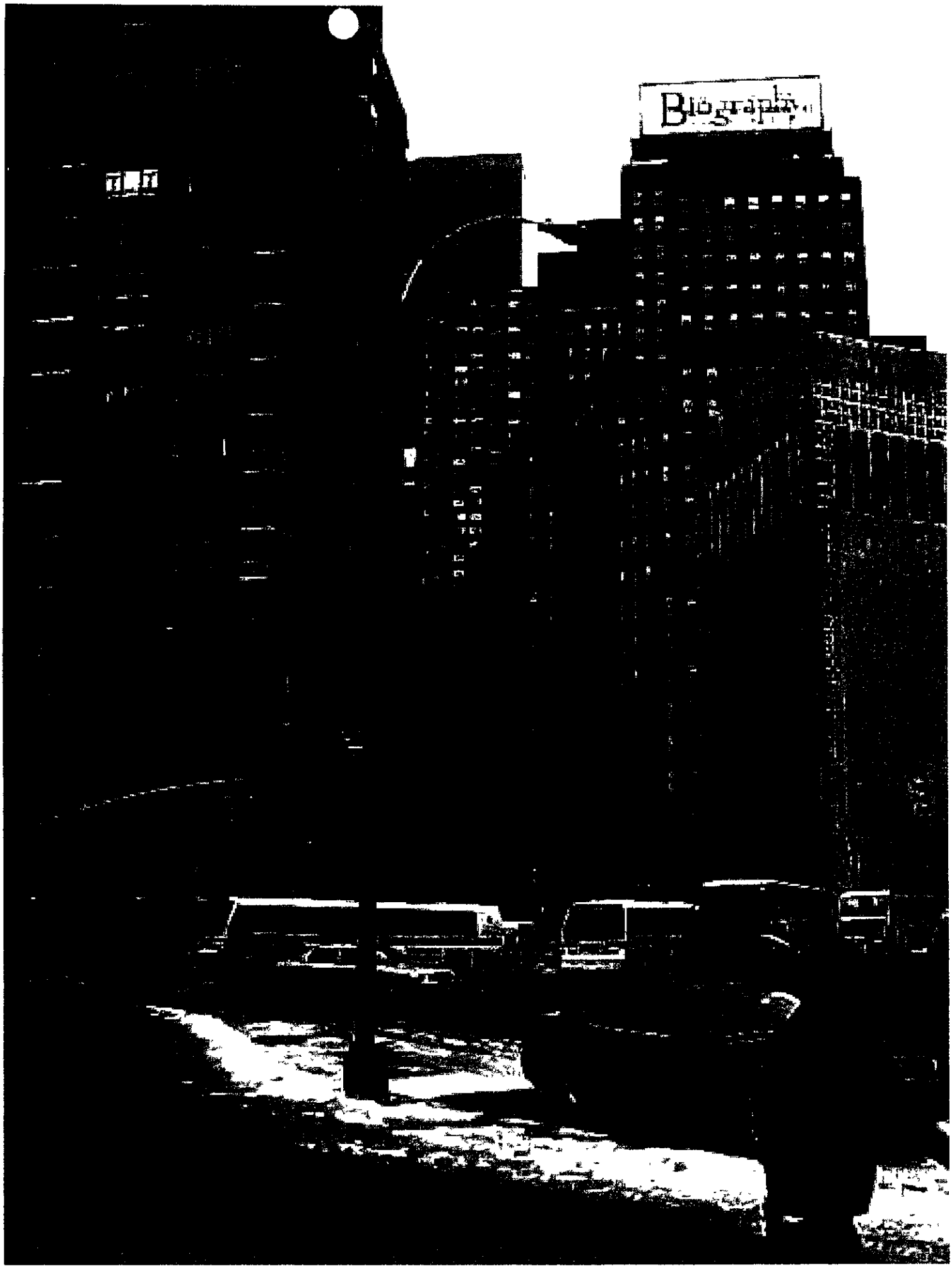
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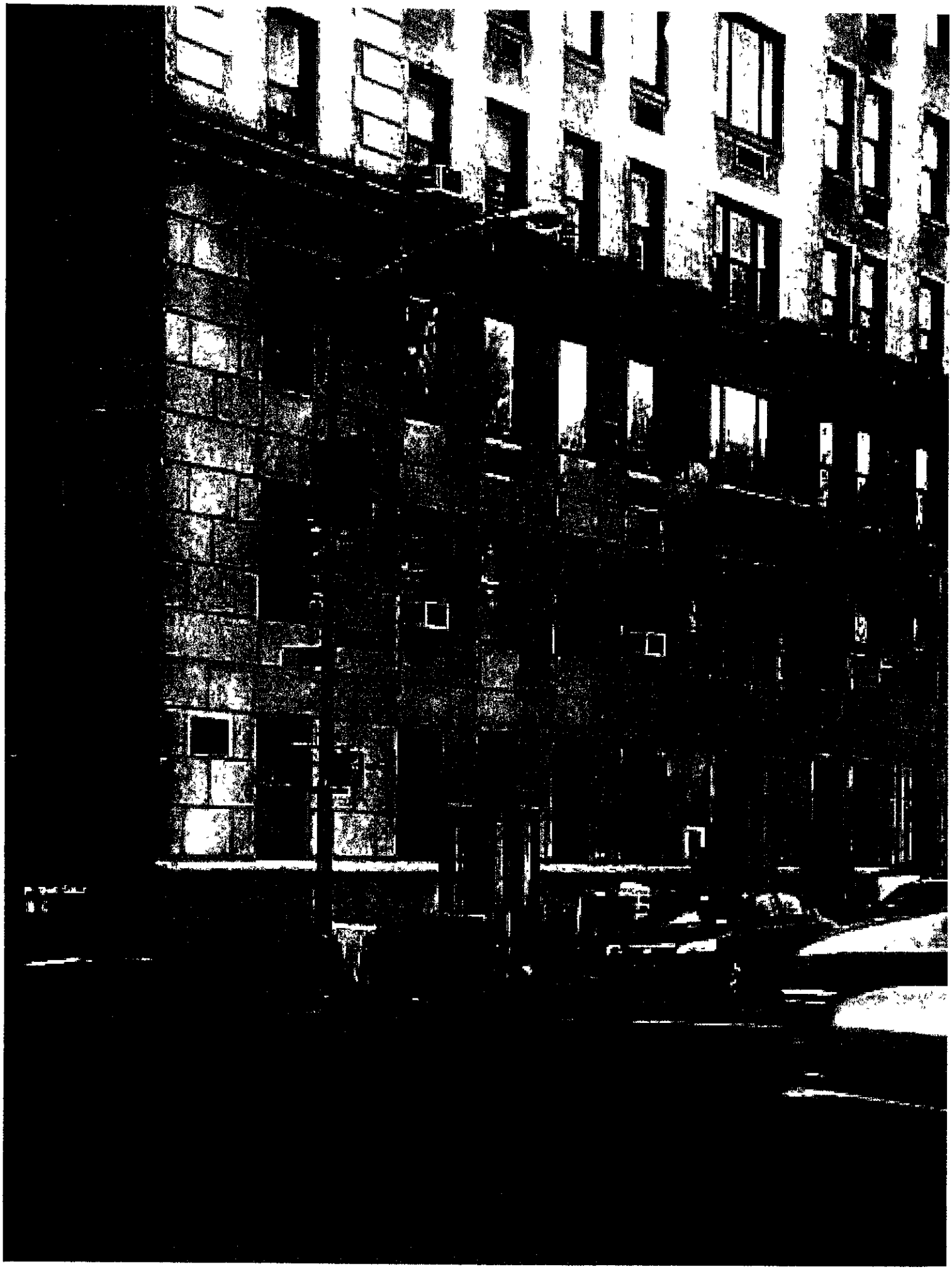

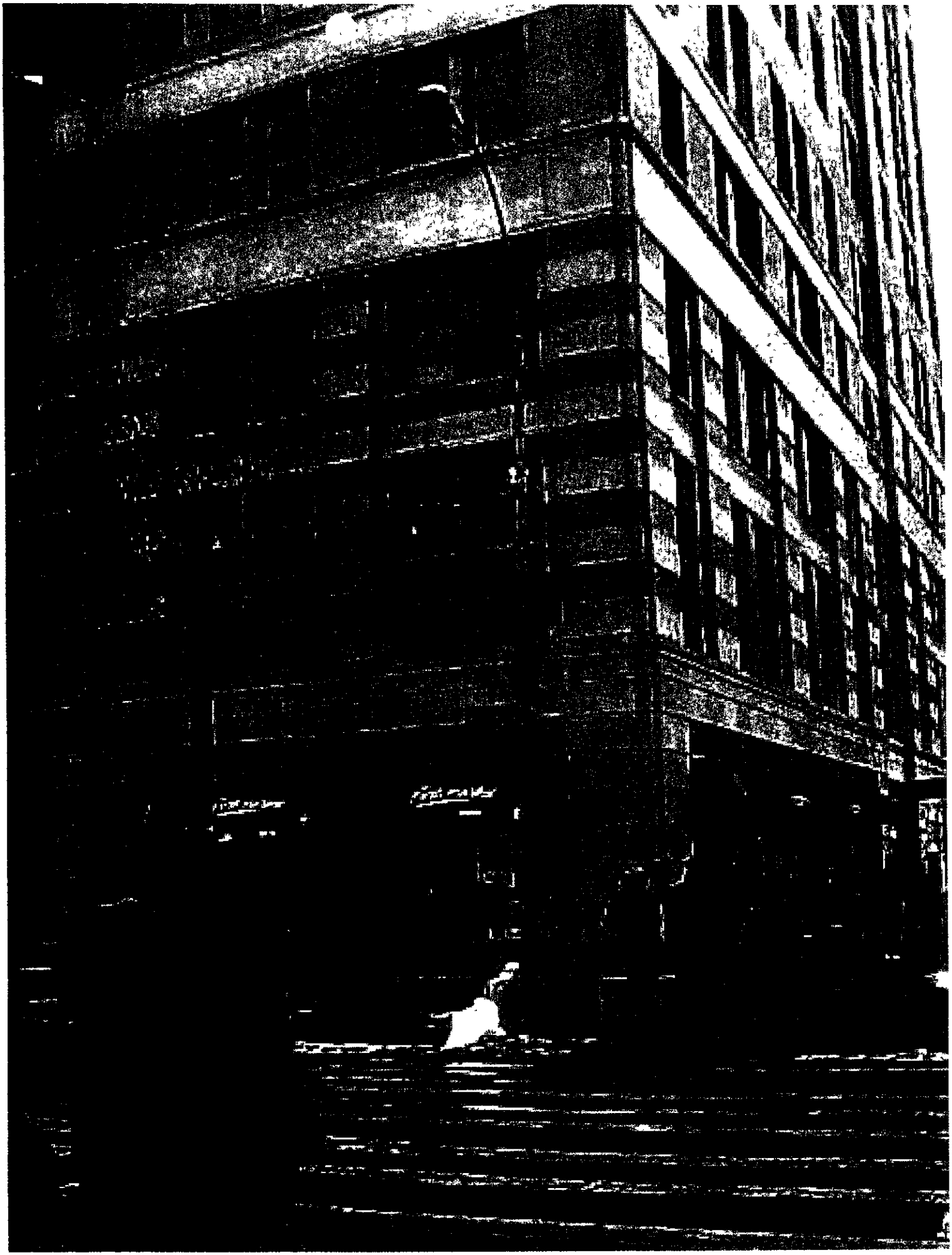

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEXTG NETWORKS OF NY, INC.,	:	
Plaintiff,	:	**AFFIDAVIT OF DAVID CUTRER, Ph.D.**
-against-	:	**IN SUPPORT OF PLAINTIFF'S MOTION FOR**
CITY OF NEW YORK; CITY OF NEW YORK DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; and GINO P. MENCHINI, in his official capacity,	:	**PRELIMINARY INJUNCTION**
Defendants.	:	

STATE OF HAWAII)
) ss.:
COUNTY OF Maui)

I, David Cutrer, being duly sworn according to law, upon my oath, hereby state:

1. I am the Chief Technology Officer and Co-Founder of NextG Networks, Inc., which is the parent company the Plaintiff in the above-captioned action, NextG Networks of NY, Inc. ("NextG").

2. This Affidavit is being submitted in support of NextG's Motion For Preliminary Injunction.

3. I hold a Ph.D. and Masters degrees in Electrical Engineering from the University of California at Berkeley, and a Bachelor of Science degree in Electrical Engineering and Applied Physics from the California Institute of Technology.

4. Prior to co-founding NextG, I was co-founder, Chief Technology Officer, and Vice President of Engineering for LGC Wireless, Inc. I have been involved in the telecommunications industry, and particularly the wireless telecommunications industry, for over 10 years. Through my academic and employment experience, I have 12 years of experience with the design, construction, and operation of both wireline and wireless telecommunications systems.

5. In my role at NextG, I am intimately familiar with the technical and economic aspects of NextG's network and provision of telecommunications services.

I. Background and Overview

6. Wireless telecommunications networks and service offerings have experienced tremendous growth in the past 10 years. During this time, wireless service providers have attempted to meet increased demand by building more wireless antenna "sites" that are traditionally mounted to either towers or rooftops of tall buildings in metro areas. The need for these cellular sites is growing at a rate outpacing the ability of the industry to supply it. While in 2001 there were roughly 120,000 cellular sites in the U.S. for all the carriers, the industry is expected to require nearly 200,000 sites in 2004. The traditional solution to this problem is to continue to build out cellular sites using the historic model . That is, find a location that can handle a full complement of cell site equipment, resolve zoning issues, acquire the real estate, and then build the site. Despite the real construction challenges of building such a site, they are dwarfed by the real estate and zoning difficulties. Each location requires 200 square feet of real estate and the placement of a large tower, an often even greater challenge. The difficulty in finding suitable locations for these sites is one of the root causes of the site deficit.

7. As a result, wireless service quality continues to suffer on many fronts including poor coverage ('dead spots'), blocked calls, and low bandwidth making many potential data applications unfeasible. As wireless customers have become more dependent on their phones, they have also become more demanding of network quality of service. The wireless industry has reached a crossroads where in order to improve quality of service and offer new features, a new paradigm of how the networks are built must be embraced.

8. NextG Networks has invented and developed a new wireless network architecture and associated telecommunication service offering based on using fiber-optic cable and small antennas mounted in the public rights-of-way (ROW), on infrastructure such as lamp posts and utility poles. Using this fiber network and ROW infrastructure, NextG Networks has effectively "split" a traditional cell site, keeping only the necessary pieces in the remote antenna location, and allowing the rest of the cell site equipment to be placed in a centralized facility.

9. This affidavit will describe the telecommunications service that NextG provides, how it differs from traditional wireless networks, and the need for NextG to access the public rights-of-way (as opposed to private property) to provide this service.

II. Traditional Wireless Networks

10. Capacity in a cellular network comes from reusing spectrum. The greater the number of radiating elements, the more often spectrum can be reused and more capacity the network will have. Early cellular systems utilized "mountain top" sites to get coverage since the capacity requirements were low. Next, carriers have built a number of sites using towers and other "high sites" such as rooftops with antenna radiation centers greater than 100 feet. Traditional towers and rooftops are good solutions for providing low capacity, wide area coverage (assuming the sites can be built or acquired where they are needed). As capacity on the network grows,

however, more and more sites must be added to the network so that the frequency spectrum that a particular operator owns can be re-used more often.

11. In order to further grow network capacity, service quality, and available bandwidth, many more "low site" (below 30 feet) antennas locations must be deployed. A network of low sites in an urban area can provide coverage in many areas, or "dead spots", that would be shadowed by the traditional antenna locations. Furthermore, the low antenna sites facilitate a greater re-use of the wireless spectrum since the antennas are well isolated from each other, thus resulting in a much higher capacity and quality network that cannot be delivered by traditional means.

III. NextG Service Offering

12. NextG Networks offers a metro telecommunications service offering that is based on the use of fiber-optic cables to transport radio frequency (RF) signals to small antennas mounted in the public ROW. This "RF-transport" telecommunications service, takes wireless spectrum from a microcellular optical repeater unit or switch location, and coverts the spectrum into an optical signal. This signal is then transported to multiple locations within a metro area using fiber optics. The transport is very efficient because the fiber bandwidth is sufficient to support multiple antennas, protocols, and service offerings over a single strand of fiber. In fact, much of the NextG proprietary technology focuses on the techniques for creating this high capacity spectrum pipe that can be shared by multiple services. From the remote locations, the fiber transports the signals to a centralized switching location. From there, the signals are transported back out to remote antenna locations or alternatively to public telecommunications networks.

13. At the remote location where the antenna is located, the optical signal is converted back into a radio signal and delivered to a small antenna for broadcast. The RF-to-optical conversion is done by a small unit located near the remote antenna.

14. In addition to providing better coverage, capacity and bandwidth versus traditional networking schemes, the NextG service is unique in several other ways. First, the antenna locations are "agnostic" to the protocol and service that is being transported to the antenna. Second, as capacity grows on the network, the cells can easily be "split" by simply re-cabling the connections at the centralized switch location to add additional sectors. This is in contrast to traditional networks, where cell splitting requires intensive planning and re-optimization of the network as new sites are added. Also, having all of the network capacity served from one location (the central switch) allows network maintenance to be centrally located, thereby reducing costs. Third, as a result of the trunking efficiency of centrally processing traffic from different locations, there are fewer network resources required to serve a given amount of traffic when compared with the traditional network architecture. This is because in the traditional architecture, each cell site must be designed to support the maximum capacity of that area. In the NextG centralized case, only the peak demand of the entire network must be considered. Finally, by feeding remote antennas from a centralized facility, up-grades to new frequency bands or protocols are easier to deploy and cost less, since the new technology is simply introduced at one location.

IV. Need To Access The Public Rights-Of-Way

15. The NextG telecommunications service and associated network solution discussed above for enabling the next generation of wireless service is dependent on the ability to deploy a uniform grid of low antennas in a metropolitan area.

16. In theory, wireless antennas can either be placed on private property (buildings), or on public ROW infrastructure (utility poles and street lamps). For the traditional "high site" architecture, private property may provide a good solution because the buildings are tall, and

since each antenna covers a lot of area, there are many candidate buildings to serve an area. However, the NextG service offering requires a contiguous grid of low antenna sites to be deployed with no gaps in the service area. Access to public ROW infrastructure is a necessity to create this network. Private property is not a viable solution for several reasons, including:

- Antenna Height. As mentioned above, NextG's service requires "low site" antennas at a height of approximately 30 feet or less (which is significantly lower than the height of traditional wireless devises at greater than 100 feet).
- No ubiquitous coverage. There are many intersections where there are no suitable candidates, or there are no willing landlords. This is a major consideration as the NextG solution requires a contiguous grid of antenna sites close to each other.
- Economic feasibility. In many locations, even if the landlord is willing to allow an antenna site, the terms of the lease are such that the service offering from NextG (or anyone else) would be financially nonviable. There is also the practical issue that due to the increased number of sites required in the NextG architecture, the rates demanded by landlords on a per site basis would make the entire network concept economically infeasible.
- Radio frequency (RF) safety. Traditional private property sites are mounted on rooftops away from the tenants in a building. Mounting low antenna sites on the sides of buildings (just on the other side of the wall from residences) would in many cases create radio frequency radiation levels within the building that would exceed FCC mandated levels for human exposure.

V. Summary and Conclusion

17. The state of the wireless industry requires that a new network architecture and service offering be deployed to support the capacity, coverage and bandwidth requirements of wireless users. NextG has developed a telecommunications service offering based on the use of fiber-optic networking of small and low antenna sites mounted to public ROW infrastructure. This "RF-transport" service has many benefits that cannot be achieved by the traditional network of towers and rooftops, including: high frequency re-use, ubiquitous street level coverage, centralized capacity management and up-grades, and the ability to support multiple services over a single fiber connection and remote antenna location.

18. Successful deployment of NextG's service requires the use of public ROW infrastructure because a contiguous grid of low antenna sites must be deployed with no gaps in service. Private property is not viable to create this type of a network because the buildings are not in all required locations, are not financially viable in most situations, and have significant hurdles to comply with RF emission requirements for side mounted antennas. In short, without access to public rights-of-way (either our own poles, or using the poles of others), NextG is not be able to provide its unique telecommunications service to the market.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

By: _____
David Cutrer

Dated: March 11, 2004

Sworn to before me this
11th day of March, 2004.

_____
Notary Public

Commission expiration date
June 1, 2007

DAVID HUGHES
NOTARY
PUBLIC
STATE OF HAWAII